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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Market Entry and Regulation)
of International Common Carriers)
With Foreign Carrier Affiliations)

RM-8355

TO: The Commission

COMMENTS OF ACC GLOBAL CORP.

ACC Global Corp. ("ACC"), by its attorneys, files these comments with respect to the "Petition for Rulemaking" ("Petition") filed by American Telephone and Telegraph Company ("AT&T") in the above-referenced proceeding. ACC is a wholly-owned subsidiary of ACC Corp. and an applicant for Section 214 authority to provide resold international telecommunications services, including international private line resale services on the U.S.-U.K. route.^{1/}

DISCUSSION

ACC supports a fully competitive market for international telecommunications, and the Commission's current classification scheme for international carriers generally provides for

^{1/} See File No. I-T-C-93-035.

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equitable treatment of all carriers and promotes such a competitive marketplace.^{2/} Moreover, the FCC lacks the authority, and as a policy matter should not attempt, to require foreign telecommunications markets to mirror the U.S. regulatory scheme.

The Commission, therefore, should not adopt additional rules at this time, but instead should continue to determine on an individual basis with reference to the specific facts before it whether the public interest of the United States would be served by the market entry and expansion in the U.S. of activities of particular international common carriers affiliated with foreign carriers. Even if the Commission adopted wide-ranging new rules to address these issues, it would still find itself making individualized rulings explicating and applying the rules on a case-by-case basis. Not only are new entrants subject to the Section 214 application process, which would require interpretation of the new rules, but also, even where an application may not necessarily be required, foreign-affiliated carriers would likely require individual rulings before committing substantial funds to U.S. investments regardless of the purported specificity of the rules.

Further, rules adopted in the abstract may be both underinclusive and overinclusive and thus dangerously prone to misuse and misapplication. As a result, the Commission could find itself hamstrung in its determinations of individual cases by the strictures of new general rules that were not appropriate for deciding the actual cases that came before the Commission, each of which is likely to raise novel circumstances. Given the rapidly evolving nature of the international telecommunications market, the Commission needs to retain flexibility to address the unique facts of each situation before it.

^{2/} See *Regulation of International Common Carriers*, 7 FCC Rcd. 7331 (1992).

Therefore, rather than addressing carrier affiliation issues by adopting wide-ranging new rules, the Commission should continue to handle such situations on a case-by-case basis. As a supplement to the application review procedure, U.S.-owned carriers harmed by asymmetrical market conditions abroad could use the Commission's petition procedures to request that the Commission review the carrier classification of a foreign-affiliated carrier whose affiliate may be abusing its market position in its home market. The Commission could also utilize other measures within its current authority, such as the imposition of conditions on Section 214 authorizations.^{3/} Such special conditions could be applied upon a finding in a particular case that to do so would serve the public interest in promoting increased competition in telecommunications throughout the world and avoiding prejudice to U.S.-owned carriers due to asymmetrical market entry conditions. Further, such conditions in particular cases could be made temporary or contingent, to encourage foreign affiliated carriers to become more receptive to competition.

Thus, while ACC does not at this time support adoption of new rules so soon after the Commission has modified its dominant carrier classification policies, ACC does urge the Commission to be prepared to take a more active role in addressing situations in which asymmetrical market regulation can harm U.S. interests. As demonstrated by the experience of ACC's U.K. affiliate, ACC Long Distance (UK) Ltd. ("ACC-U.K."), in attempting to enter the International Simple Resale ("ISR") market in the United Kingdom, the obstructionist practices

^{3/} For example, non-dominant carrier classifications or Section 214 grants could be expressly subject to Commission re-examination, just as "equivalent opportunities" determinations in international private line resale situations are subject to review if market conditions change.

of dominant carriers can, in particular cases, effectively frustrate the policies even of foreign governments that share the U.S.'s interest in bringing international accounting rates in line with costs and that encourage the development of competitive telecommunications markets. This is vividly shown in the Chronology attached as Exhibit A which documents ACC-U.K.'s continuous and, to date, unsuccessful efforts, extending for more than one year, to obtain an agreement with British Telecommunications plc ("BT") that would provide ACC-U.K. with interconnection arrangements on commercially reasonable terms.^{4/} In cases where a carrier may abuse its market power, the Commission should be able to implement special measures to avoid frustration of the efforts of U.S. firms to enter foreign markets by the very openness of the U.S. market, which generally allows foreign-affiliated carriers to establish international alliances of a scope foreclosed to their U.S.-based competitors,^{5/} regardless of the degree of competition permitted or practically available in a given foreign market.

ACC therefore believes that, in lieu of adopting wide-ranging general rules, it is appropriate for the Commission to clarify its rules, which would not require a time-consuming regulatory proceeding. Appropriate clarification would include (a) giving explicit recognition of the availability of the petition procedure as a means of initiating Commission consideration of

^{4/} Indeed, BT's dilatory tactics have continued for so long that the U.K. regulator, the Office of Telecommunications ("OfTel"), has now determined that governmental intervention to enforce ACC-U.K.'s interconnection rights *vis-à-vis* BT is required.

^{5/} See, e.g., File No. ISP-93-013 (8/23/93) (requesting confirmation of the legality of a merger in which BT would acquire more than 20% of MCI, the second-largest U.S. facilities-based domestic and international carrier, and the two firms would engage in joint marketing and service provisioning as well as market division activities). Under the present U.K. duopoly policy, a U.S.-owned firm would not be able to provide facilities-based international service in the U.K.

possible regulatory strictures or sanctions to be applied to particular foreign carrier affiliates, and (b) using application and carrier classification proceedings as they arise to develop and refine the "equivalent opportunities" policies recently implemented by the Commission in the international private line resale context. In such individualized proceedings, the Commission can explore the public interest benefits of adopting and implementing regulatory conditions that would limit or subject to increased regulatory oversight the U.S. activities of a particular common carrier whose foreign carrier affiliate has thwarted the efforts of U.S.-owned carriers to enter their home markets or markets in which they may exercise substantial influence.

Such an individualized, case-by-case procedure provides leverage that may promote increased competition abroad without the possible adverse impact on international comity of wholesale adoption of new restrictions on affiliates of foreign carriers. While ACC's first-hand experience demonstrates the difficulties U.S. carriers have in entering foreign markets, ACC is concerned that the U.S. not prejudice the development of such international cooperation at the very time when many foreign regulators are on the brink of adopting more competitive market policies. Thus, ACC supports a continued *ad hoc* approach, rather than wholesale adoption of new regulatory strictures.

CONCLUSION

The Commission should, therefore, at this time, refrain from initiating a rulemaking proceeding to consider adoption of rules governing the market entry and expansion of U.S. international telecommunications common carriers affiliated with foreign carriers. To rush to adopt new, restrictive rules now not only risks adoption of bad rules but also could be viewed

by foreign regulatory authorities as inimical to the development of increasingly cooperative international telecommunications arrangements.

Rather, the Commission should clarify that, as a supplement to the Section 214 application review process, the Commission's current petition procedure is available for initiating review, on an individual basis, of the impact of foreign carrier affiliations on the participation of U.S.-owned telecommunications carriers in particular world markets. Through such a petition procedure, affected carriers may bring to the Commission's attention particular circumstances that warrant conditioning of Section 214 authorization of affiliates of foreign carriers without jeopardizing the development of more competitive regulatory environments abroad.

Respectfully submitted,

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Dated: November 1, 1993

CHRONOLOGY

15th January 1992	Submission of application by ACC Long Distance UK Limited ("ACC") to UK Department of Trade and Industry ("DTI") for International Simple Resale ("ISR") License.
18 May 1992	BT letter to UK Office of Telecom Minutes ("Of tel") arguing that ISR licensees are not entitled to interconnect with BT's network under Condition 13 of BT's License by using an individually negotiated agreement with wholesale rates, but rather must pay retail rates with no possibility of negotiation of terms.
27th May 1992	DTI letter to ACC's lawyers stating that ACC's ISR License application was agreed in principle.
11th June 1992	Of tel letter to BT refuting BT's arguments in their 18th May 1992 letter.
23rd June 1992	DTI letter to ACC's lawyers giving them for the first time a draft of the ISR License for ACC.
26th June 1992	Letter by ACC's lawyers to BT asking for a draft Interconnect Agreement to be supplied.
8th July 1992	Chasing letter by ACC's lawyers to BT asking for a response to their earlier letter of 26th June 1992.
20th July 1992	Meeting between ACC's external consultants in the UK and BT during which BT stated that they would not negotiate with ACC until such time as an ISR License had been granted to ACC.
17th August 1992	Further meeting between ACC's external consultants and BT during which BT repeated their earlier stance.
20th August 1992	Meeting between ACC's US personnel and BT in the UK.

24th August 1992	Letter by ACC Corp to BT requesting availability of interconnect at both trunkside (i.e. at a trunk exchange) and lineside (i.e. at a local exchange) at wholesale rates under Condition 13 of BT's License.
9th September 1992	Letter by ACC's lawyers to BT stating that under Condition 13 of BT's License it was obliged to connect any holder of an individual license at either trunkside or lineside under Condition 13 and stating that this view was also held by the DTI and Oftel.
25th September 1992	Letter by BT to ACC Corp responding to the earlier letter of 24th August setting out various interconnect options made available by BT, none of which included lineside interconnect at wholesale rates under Condition 13.
25th September 1992	Grant of ACC's ISR License so that it is now the holder of an individual license and designation by the DTI of Canada, Australia and Sweden as equivalent to the UK for purposes of ISR.
30th September 1992	Further request by ACC's lawyers for a draft Interconnect Agreement from BT.
1st October 1992	Further request for a draft Interconnect Agreement from BT.
6th October 1992	Confidentiality agreement between ACC and BT signed governing information to be disclosed during pre-contract negotiations for an Interconnect Agreement.
13th October 1992	Letter by ACC Corp to BT in response to their letter of 25th September stating that the interconnect options offered by BT were unsatisfactory both for technical and price reasons and setting out key points on the services required of BT.
16th October 1992	Letter from BT to ACC's lawyers re-stating BT's position that the retail offering in their letter of 25th September meets ACC's requirements.

2nd November 1992

BT provides ACC's lawyers with a draft Interconnect Agreement for the first time but states that it is only suitable for trunkside as opposed to lineside interconnect as also requested by ACC.

3rd November 1992

Meeting between ACC's US representatives and BT in the UK at which BT said that they were not prepared to discuss interconnect charges because they were not in a position to determine what charges should be raised on ACC. ACC repeating is request for a draft Interconnect Agreement to be supplied and suggesting that it could be similar to existing agreements with Cable TV companies. BT repeating its position that ACC was only entitled to retail offerings and not wholesale rates. BT also stating that any equipment ACC wished to use to interconnect with BT's network must be "type approved" and that if it was not so approved then it was not a relevant connectable system. ACC replying that because it had an individual license its equipment did not need to go through the formal type approvals process. ACC stating that such equipment qualified as a relevant connectable system and therefore that BT was obliged under its license to connect its system with such equipment under Condition 13 even if it did not have type approval. ACC's representatives stating that their views were confirmed by the DTI in a letter from the DTI received on 27th May 1992.

4th November 1992

Meeting between ACC and Oftel to discuss problems with BT.

1st December 1992

Letter to ACC Corp from BT informing them that BT was not willing to provide lineside interconnect at wholesale prices and stating that it hoped to be able to shortly give ACC wholesale prices for trunkside interconnect provided this was from a relevant connectable system operated by ACC to a BT trunk exchange.

6th January 1993

Letter from ACC Corp's chairman to BT's chairman urging him to use his best efforts to bring interconnect negotiations to a rapid and successful conclusion.

12th January 1993

Submission by ACC to Oftel of a specially commissioned economists' report highlighting the fact that access deficit contributions ("ADC's") imposed by BT for interconnection to its network were a significant barrier to entry into the UK market place because they made services such as ISR not economically viable.

22nd January 1993

Letter by BT to ACC Corp giving for the first time conveyance prices and ADC's in respect of ISR on the assumption that ACC interconnected at trunkside rather than at lineside.

20th January 1993

Reply from BT to ACC Corp's letter of 6th January to BT's Chairman.

2nd February 1993

Letter from ACC to BT responding to BT's letter of 22nd January on pricing pointing out that application of ADC's made the overall cost of BT's services commercially unreasonable.

4th February 1993

Letter from ACC Corp to BT requesting meeting with senior official at BT.

4th February 1993

Letter from ACC Corp to Oftel requesting that Oftel waive ADC's sought to be levied by BT on ACC for interconnection with its system under Condition 12 of BT's License.

9th February 1993

Reply by Oftel to ACC's letter of 4th February setting out the procedure for waiver requests.

10th February 1993

Letter from ACC's lawyers to BT confirming earlier request for details of UK national i.e. domestic as opposed to international conveyance prices and relevant ADC's for the same.

24th February 1993	Chasing letter by ACC's lawyers to BT requesting prices sought in previous request of 10th February 1993.
25th February 1993	Letter from BT to ACC's lawyers in response to their letter of 24th February pointing out that BT was not able to quote national conveyance prices and therefore could not quote the relevant ADC in respect of such services.
19th March 1993	Letter from ACC's lawyers to Ofel pointing out that BT's conveyance prices were unacceptable to ACC.
22nd March 1993	Submission by ACC's lawyers of the first ACC draft of the ACC BT Interconnect Agreement to BT.
25th March 1993	Letter from Ofel to ACC's lawyers in response to their letter of 19th March 1993.
14th April 1993	Letter from ACC's lawyers to Ofel complaining about BT's slowness in providing conveyance rates for domestic resale and informing Ofel that BT had told ACC that it was not convinced it was obliged to provide such services anyway.
14th April 1993	First meeting between ACC's lawyers and BT's lawyers to discuss the draft ACC BT Interconnect Agreement at which BT presented a re-draft of the proposed Agreement and during which it became apparent that the draft offered was unsatisfactory. At such meeting BT offered to provide a re-draft.
20th April 1993	ACC's lawyers informed by BT that a re-draft of the ACC BT Interconnect Agreement would probably take 2 further weeks.
23rd April 1993	Letter from Ofel stating that BT is obliged to negotiate terms for provision of domestic resale services to ACC.

29th April 1993

Letter by ACC's lawyers to Oftel requesting clarification on whether BT is obliged to provide ACC with domestic resale services in the UK under Condition 13. Such letter also complaining about BT's delays in providing price information to ACC specifically that ACC had just been informed it would take a month for BT to give ACC a price for BT to transit calls from ACC to other operators such as PTO's, mobile operators and cable companies, such letter requesting Oftel's assistance for a speedy resolution.

6th May 1993

Submission by ACC to BT of a formal statement of requirements.

18th May 1993

Letter from Oftel to ACC's lawyers in response to their letter of 29th April stating that there was no justification for BT to have any doubts about its obligation to enter into agreement with ACC under Condition 13 for domestic resale services.

19th May 1993

Meeting between ACC and BT to discuss commercial issues.

26th May 1993

Letter from ACC pointing out that BT is not obliged to charge ACC an ADC and also suggesting that if it waived or reduced any such ADC it would not be discriminating against other customers under the terms of its License.

28th May 1993

Meeting between ACC and BT to discuss BT's charges at which BT said that they were not prepared to waive any ADC.

7th June 1993

Letter from ACC's lawyers to the DTI complaining about the delays in obtaining a satisfactory Interconnection Agreement with BT.

23rd June 1993

Meeting between ACC and BT to discuss technical issues relating to interconnection.

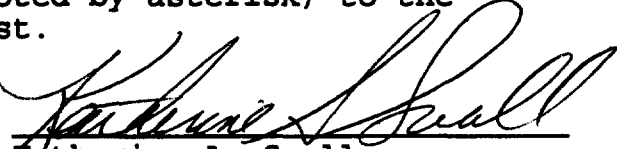
15th July 1993	Letter from BT to ACC's lawyers quoting for the first time to ACC wholesale rates for a certain type of lineside interconnect and offering to provide such services after ACC's lawyers had previously found out that contrary to earlier assurances, BT was in fact offering wholesale rates for lineside interconnect.
23rd July 1993	Submission of formal request by ACC's lawyers to Oftel for a determination of BT's conveyance prices and access deficit contributions in respect of both international and national simple resale services.
28th July 1993	BT signs Interconnect Agreement with NYNEX. The terms include agreement to not charge ADC's until such time as Oftel determines these are payable.
20th September 1993	Letter of complaint from ACC's lawyers to the EEC Commission on the BT/MCI joint venture and on BT's efforts to impede ACC's entry into the UK telecommunications market place.
22nd September 1993	Issue of a revised draft of the ACC BT Interconnect Agreement to BT by ACC's lawyers.
27th September 1993	ACC telephoned K. Moss and advised that equipment would be with him based on NYNEX and that ACC wanted to meet on commercial issues in 48 hours.
27th September 1993	Letter from J. Moore (ACC) to BT confirming meeting on Friday (1/10) and inviting BT to ask ACC for any clarification of ACC's requests under Statement of Requirements ("S. of R.").
27th September 1993	Draft 1 of Interconnect Agreement (NYNEX version) to BT and D.E.
30th September 1993	Meeting with BT to discuss S. of R. Joe Moore and John Johnson representing ACC.

30th September 1993	MT (ACC) spoke to K. Moss (BT) on telephone (activity report of September 30 refers). Meeting with BT arranged for October 15, 1993.
30th September 1993	Letter MT to K. Moss at BT.
1st October 1993	Letter MT to D.E. complaining about BT's wish to introduce yet another draft.
7th October 1993	Letter to K. Moss chasing for comments to draft sent September 27th.
7th October 1993	Letter to DG (cc: BT) enclosing technical annexes to agreement.
11th October 1993	Issue 3 of S. of R. faxed to BT.
12th October 1993	Letter to BT requesting comments on 9/27/93 draft by 10/13/93 (prior to 10/15/93 meeting).
13th October 1993	Letter to Deputy D-G Wigglesworth asking for intervention with BT consistent with the Deputy D-G's expressed views that satisfactory interconnection arrangements are a prerequisite for competition and that ACC-UK's system should be treated as a Relevant Connectable System for interconnect purposes.
14th October 1993	Letter to BT cancelling scheduled 10/15/93 meeting because BT had refused to provide comments on the 9/27/93 draft and stating that ACC will seek tripartite meeting with BT and Oftel.
15th October 1993	Letter from ACC to D-G requesting tripartite meeting among ACC, BT, and Oftel with a view toward adoption of ACC's draft agreement; meeting with Oftel staff re scheduling of such a meeting.
18th October 1993	Receipt of letter dated 10/15/93 to ACC from BT forwarding prices for conveyance of calls from ACC's switch to BT and enclosing draft standard interconnection agreement and a suggested timetable for negotiation of UK domestic conveyance prices.

18th October 1993	Letter from ACC to BT acknowledging receipt of draft agreement and requesting full details of UK numbering plan.
20th October 1993	Letter from ACC to BT requesting use of ACC draft and commenting on BT standard draft as too unspecific to be useful.
21st October 1993	Letter to other UK telecommunications licensees seeking interconnection with BT suggesting they adopt the ACC draft.
25th October 1993	Oftel staff informed ACC that Oftel will convene a tripartite meeting with ACC and BT to discuss why ACC's draft interconnection agreement should not form the basis of further negotiations.
25th October 1993	Telephone call from ACC to BT informing BT of Oftel's intention to convene the tripartite meeting.
To date	<ul style="list-style-type: none"> ● Still no quotation received from BT for national simple resale conveyance prices. ● Still no waiver of ADC's for ACC nor any reduction in BT's conveyance prices to ACC. ● Still no agreement on draft that will form the basis of final interconnection negotiations. ● ACC still the only ISR license holder in the UK.

CERTIFICATE OF SERVICE

I hereby declare the that following documents were served this 1st day of November 1993 via first class postage prepaid U.S. mail or by hand delivery (denoted by asterisk) to the parties on the attached service list.


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